

CASE SUMMARY

TRA finds Notice of Claim defective so proceedings a nullity, alternatively Challenge deemed withdrawn

Decision date: 19 April 2024

CSUM 24/03

CASE

TRA 007/22 [2024] NZTRA 003

LEGISLATIVE REFERENCES

Tax Administration Act 1994, s120I

Taxation Review Authorities Regulations 1998, regs 7, 30(2) and 32

LEGAL TERMS

No jurisdiction, nullity, deemed withdrawn

Summary

The Taxation Review Authority (TRA) has no jurisdiction to hear a Challenge Proceeding regarding the imposition of use of money interest.

The Disputants failed to file a valid Notice of Claim concerning a second issue which had the potential to be within the TRA's jurisdiction. Accordingly, the Challenge Proceedings were defective (a nullity) with no evident path to rectification.

The Disputants failed to attend a mandatory directions hearing. There was no good reason for this and there were no exceptional circumstances. The result being the proceedings are at an end.

Impact

The outcome of this case confirms that a Notice of Claim must meet the requirements in the Taxation Review Authorities Regulations 1998 to commence proceedings, and failure to attend a directions hearing will bring the proceedings to an end unless there is a good reason or exceptional circumstances.

Facts

There were two tax issues that progressed through the disputes processes that precede Challenge Proceedings in the TRA. The Disputants (the Company, Mr X and Ms X) attempted to progress the two issues in one Challenge Proceeding.

The first dispute concerned the imposition of use of money interest (UOMI). The first adjudication report determined that the imposition of UOMI cannot be disputed.

The TRA received a "Notice of Claim" on 17 June 2022, and a document labelled "Statement of Claim" dated July 2022 (First Challenge). The Notice of Claim did not, on the face of it, appear to advance any matters over which the TRA had jurisdiction. The Disputants were notified of this.

The Commissioner filed a notice of appearance challenging the TRA's jurisdiction and applied to strike out the proceeding on the grounds the Disputants had not identified a "disputable decision", there was no reasonably arguable cause of action, and the claim was frivolous and vexatious. The Commissioner did accept there was a second dispute process in progress which could, later, raise issues with the TRA's jurisdiction. That second dispute was not advanced sufficiently though for the TRA to have jurisdiction at the time the application for strike out was made.

The second dispute, which was still in the disputes process at the time the First Challenge was filed with the TRA, commenced on 9 May 2022 when a Notice of Proposed Adjustment was issued. The Company made amendments to the PAYE returns for the months ended 31 August 2018 to 31 March 2019 to record PAYE deductions from additional amounts purportedly earned by Mr X and Ms X from the Company.

The Commissioner removed the additional amounts from the Company's PAYE returns for the months ended 31 August 2018 to 31 March 2019 and reassessed the Company's 2019 income tax return to include contracting income, reconstruct the Company's income and expenses resulting in an overall increase in its net profit, and removed the corresponding salaries and wages deduction. The Commissioner also applied the attribution rule to the contract income to Ms X and allowed a corresponding deduction for the Company.

The second adjudication report for the second dispute, upheld the Commissioner's positions and rejected the arguments the Company raised.

On 23 January 2023 the Disputants filed with the TRA a document described as a Notice of Claim. A directions hearing was to be held on 11 August 2023 however the Case Manager's three attempts to connect (by phone) the Disputants to the directions hearing were unsuccessful. Subsequently, the TRA received three emails from the Disputants. The first email indicated the Disputants would be available for the directions hearing. The second email requested that the directions hearing be rescheduled. The third email claimed that TRA hung up on the Disputants and went on to allege corruption on the part of the TRA and other parties.

The TRA sent the Disputants a Minute identifying the consequences of their non-attendance and how they could address that issue. The Disputants had until 20 October 2023 to provide a response.

On 18 December 2023 Mr X repeated the claims that the Case Manager hung up the telephone when Mr X had attempted to attend the directions hearing. Mr X accompanied that with threats that the Case Manager and the TRA would be prosecuted under the Crimes Act 1961. More recently Mr X has stated that Disputants propose bringing a private criminal prosecution against all Crown parties involved asserting dishonesty.

Issues

1. Whether the TRA has jurisdiction to hear a Challenge Proceeding regarding the imposition of UOMI;
2. Whether the document filed with the TRA on 23 January 2023 is a compliant Notice of Claim;
3. Whether the Disputant had good reasons for failing to attend the directions hearing or whether there are exceptional circumstances.

Decision

1. Whether the TRA has jurisdiction to hear a Challenge Proceeding regarding the imposition of UOMI

The TRA found that the imposition of UOMI was entirely outside the scope of the TRA's jurisdiction. The TRA has no jurisdiction to hear Challenge Proceedings regarding UOMI as s 120I of the Tax Administration Act 1994 (TAA) prohibits a taxpayer challenging interest payable under pt 7 of the TAA.

2. Whether the document filed with the TRA on 23 January 2023 is a compliant Notice of Claim

The TRA found that the document filed on 23 January 2023 (the document) is not a valid Notice of Claim as it did not include the essential requirements of:

- Identifying one or more of the Commissioner's decisions; and
- Grounds amounting to positions of fact and law to challenge the decision(s).

The TRA said that the document is a "narrative that fails to identify the material decisions by the Commissioner and respond to them with grounds on which the Disputants say the decisions are wrong." Furthermore, the Disputants did not demonstrate:

...a basis for thinking they have a reasonably arguable case to show any disputable decision made by the Commissioner was wrong. Accordingly, the Challenge Proceedings are defective, with no evident path to rectification.

The TRA found that the Disputants' documents show a dissatisfaction with the law that does, on its face, apply to them. That is not a justiciable issue.

The TRA found that the Disputants had failed to file a Notice of Claim in a form that commenced Challenge Proceedings before the TRA. Therefore, the processes before the TRA are a nullity.

3. Whether the Disputant had good reasons for failing to attend the directions hearing or there are exceptional circumstances.

The TRA found that there was non-attendance by the Disputants at the directions hearing which is mandatory pursuant to reg 30(2) of the Taxation Review Authorities Regulations 1998 (the Regulations).

Where a disputant fails to attend a directions hearing the Challenge is deemed to be withdrawn and the disputant may only proceed with the consent of the TRA under reg 32 of the Regulations.

The TRA treated an email of 23 August 2023 as an application under reg 32 of the Regulations. The explanation given for failing to attend the directions hearing was rejected as being false. The TRA was involved in the directions hearing and delayed it to allow repeated attempts to contact Mr X.

The TRA was satisfied that there was no good reason for the Disputants failing to attend the directions hearing. Nor did the TRA find exceptional circumstances applied to justify allowing the Challenge to proceed.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal, or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.